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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

RUDY RIVERA, an individual;

Plaintiff,

v.

UNITED STATES OF AMERICA;

Defendant.

CASE NO.:

COMPLAINT

COMES NOW, the Plaintiff RUDY RIVERA, by and through his attorneys, Matthew Q. Callister, Esq. and Mitchell S. Bisson, Esq. of the Callister Law Group, and hereby states, alleges, and complains against the above-named Defendant, the UNITED STATES OF AMERICA as follows:

INTRODUCTION

1. This action arises out of the pretrial detention of Rudy Rivera in solitary confinement for *355 days* without *ever* appearing before the United States District Court for the District of Nevada or being appointed counsel. Officers and employees of the United States of America “lost” Plaintiff in the United States criminal justice system – while keeping him incarcerated the entire time – for almost an *entire year* before he was released and his criminal charges were eventually dismissed with prejudice.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 in that this action arises under the Constitution, laws, or treaties of the United States of

1 America. This Court further has subject matter jurisdiction over this matter pursuant to 28 U.S.C.
2 § 1346(b) in that this is a claim against the Defendant United States of America, for money
3 damages, accruing on or after January 1, 1945, for injury caused by the negligent and wrongful
4 acts and omissions of employees of the Government while acting within the course and scope of
5 their office or employment, under the circumstances where the Defendant, if a private person,
6 would be liable to the Plaintiff.

7 3. Jurisdiction founded upon the federal law is proper in that this action is premised
8 upon federal causes of action under the Federal Tort Claims Act (hereinafter “FTCA”), 28 U.S.C.
9 § 2671, *et. seq.*

10 4. Plaintiff has fully complied with the provisions of 28 U.S.C. § 2675 of the FTCA.

11 5. Pursuant to the FTCA, Plaintiff presented his claim via the SF-95 form to the
12 appropriate federal agency on or about October 31, 2017 for administrative settlement under the
13 FTCA.

14 6. As of the date of this filing, the United States of America has neither rejected nor
15 accepted Plaintiff’s claims. Based on the non-response of the United States of America to
16 Plaintiff’s claims, this lawsuit was filed.

17 7. This action is timely pursuant to 28 U.S.C. § 2401(b) in that it was presented to the
18 appropriate federal agency within two years of accrual, no notice of rejection/denial has been
19 received, and more than six months has passed since Plaintiff presented his claims.

20 8. Venue in this District is proper because all facts plead and all acts and omissions
21 giving rise to this Complaint occurred in this judicial district and this action is properly assigned
22 to the United States District Court for the District of Nevada-Las Vegas.

23 **PARTIES**

24 9. At all times relevant herein, Plaintiff RUDY RIVERA is and was a resident of San
25 Joaquin County, State of California.

26 10. Defendant United States of America is sued for Plaintiff’s injuries caused by the
27 negligent or wrongful acts or omissions of its employees. Those employees were acting within the
28 scope of their office of employment under circumstances where the United States, if a private

1 person, would be liable to Plaintiff in accordance with the laws of the State of Nevada. *See* 28
 2 U.S.C. § 1346(b).

3 11. At all times relevant herein, Defendant's employee, Daniel Bogden ("Bogden"),
 4 was a United States Attorney prosecuting criminal charges on behalf of the United States of
 5 America against Plaintiff. During all times alleged in this Complaint, Bogden was acting in the
 6 scope of his office or employment as a United States Attorney.

7 12. At all times relevant herein, Defendant's employee, Amber Craig ("Craig"), was
 8 an Assistant United States Attorney prosecuting criminal charges on behalf of the United States
 9 of America against Plaintiff. During all times alleged in this Complaint, Craig was acting in the
 10 scope of her office or employment as an Assistant United States Attorney.

11 13. At all times relevant herein, Defendant's employee, Susan Cushman ("Cushman"),
 12 was an Assistant United States Attorney prosecuting criminal charges on behalf of the United
 13 States of America against Plaintiff. During all times alleged in this Complaint, Cushman was
 14 acting in the scope of her office or employment as an Assistant United States Attorney.

15 14. At all times relevant herein, Defendant's employee, a yet-identified United States
 16 Marshal with the initials "MK," was the United States Marshal who transported Plaintiff to jail
 17 and filed the arrest-return with the Court. During all times alleged in this Complaint, this yet-
 18 identified employee was acting in the scope of his/her office or employment as a United States
 19 Marshal.

20 COMMON ALLEGATIONS

21 15. On November 25, 2014, a federal indictment was filed by Defendant's employees,
 22 Bogden and Craig, in the United States District Court for the District of Nevada charging Plaintiff
 23 Rivera and three co-defendants with marijuana-related offenses; that same day, the Court issued
 24 a federal arrest warrant for Plaintiff.

25 16. On or about October 26, 2015, the United States Marshals in the Eastern District
 26 of California arrested and took Plaintiff Rivera into custody.

27 17. Pursuant to Federal Rule of Criminal Procedure 5(c)(3), Plaintiff was brought
 28 before a magistrate judge in the Eastern District of California on October 27, 2015; the magistrate

1 judge ordered Plaintiff detained pending transfer to the District of Nevada for his initial
2 appearance and a detention hearing.

3 18. The magistrate judge further ordered Plaintiff into the custody of the United States
4 Marshal's Service and directed them to transfer Plaintiff to the District of Nevada "forthwith."

5 19. On or about November 4, 2015, the United States Marshals in the Eastern District
6 of California transferred Plaintiff to the United States Marshals in the District of Nevada in
7 accordance with Rule 5(c).

8 20. Plaintiff was transferred into the custody of Defendant's employee, a yet-identified
9 United States Marshal in the District of Nevada with the initials "MK", who in turn detained
10 Plaintiff at the Nevada Southern Detention Center (hereinafter "NSDC") in Pahrump, Nevada.

11 21. On November 6, 2015, Defendant's employee "MK" acknowledged Plaintiff was
12 in his/her custody by signing and filing the arrest return for Plaintiff; notification of Plaintiff's
13 presence in the District of Nevada, and specifically at NSDC was publicly filed on the docket and
14 electronically served on Defendant and Defendant's employees Bogden, Craig, and Cushman.

15 22. *For the next 355 days, Plaintiff remained detained in solitary confinement* at
16 NSDC without ever appearing before a judge in the District of Nevada for an arraignment, initial
17 appearance, or other hearing and without ever having counsel appointed to him.

18 23. After almost a year without being appointed counsel or having been taken in front
19 of a judge for his arraignment and/or detention hearing, Plaintiff was able to send correspondence
20 to the Federal Public Defender's Office seeking help; in response, an employee of the Federal
21 Public Defender's Office contacted the local United States Attorney's Office and U.S. Marshals.

22 24. As a result of those efforts, Plaintiff was *finally* brought before a United States
23 magistrate judge in the District of Nevada on October 24, 2016; at his initial appearance, Plaintiff
24 pled not guilty, was appointed counsel, and was released on a personal recognizance bond.

25 25. Notably, as early as March 2016, while Plaintiff sat idly in solitary confinement at
26 NSDC in Pahrump, Defendant and its employees, Bogden, Craig, and Cushman, sought dismissal
27 of their case against two of Plaintiff's codefendants.

28 26. However, Defendant and its employees, Bogden, Craig, and Cushman, completely

1 and utterly failed to take *any* action to prosecute its case against Plaintiff; as a result, Plaintiff sat
 2 in solitary confinement for 355 days without ever being appointed counsel or being taken in front
 3 of a magistrate judge in this District for his arraignment and/or detention hearing.

4 27. Finally, on or about February 1, 2017, all charges that had been brought against
 5 Plaintiff were dismissed *with prejudice*.

6 28. As a direct and proximate result of Defendant's and its employees' actions and
 7 inactions, Plaintiff has suffered injury and has been damaged in an amount of \$355,000,000.00.

8 **CLAIMS FOR RELIEF**

9 **COUNT I**

10 **FTCA / Negligence**

11 29. Plaintiff realleges and incorporates herein by reference each and every allegation
 12 contained in the above paragraphs as if fully set forth herein.

13 30. Plaintiff was owed a duty of care by Defendant and Defendant's employees to
 14 ensure the charges against him were timely prosecuted. Defendant and its employees also owed
 15 Plaintiff a general duty of care while they held Plaintiff in their custody.

16 31. Defendant and its employees breached these duties when, among other things, they
 17 detained and kept custody of Plaintiff for 355 days without Plaintiff ever having access to counsel
 18 or being arraigned in front of a magistrate judge in the District of Nevada.

19 32. As explained above, Defendant and its employees Bogden, Craig, and Cushman
 20 took *no* steps to prosecute their case against Plaintiff once Plaintiff was arrested and notification
 21 of his presence in the District of Nevada was filed with the Court; in fact, Plaintiff remained
 22 detained in solitary confinement at NSDC for 355 days before finally being taken in front of a
 23 magistrate judge for his arraignment and/or detention hearing; this is especially troubling because
 24 during the time Plaintiff sat idly in solitary confinement at NSDC, the government sought
 25 dismissal of Plaintiff's co-defendants' charges. Furthermore, Plaintiff was never allowed to
 26 exercise his right to have counsel.

27 33. Plaintiff was not appointed or given access to an attorney until *355 days after* he
 28 was detained at NSDC; likewise, Plaintiff was not provided access to the Court until *355 days*

1 *after* he was detained at NSDC.

2 34. Furthermore, Defendant's yet-identified employee, a United States Marshal with
3 the initials "MK," took no action while Plaintiff was in his/her custody to ensure Plaintiff was
4 appointed counsel or taken before a magistrate judge in this district for arraignment and/or a
5 detention hearing as required by law.

6 35. As a direct, proximate, and foreseeable result of the actions and omissions of
7 Defendant and its employees, Plaintiff was incarcerated for 355 days and suffered harm, extreme
8 and severe fright, shock, fear, horror, and emotional distress, the exact amount to be proven at
9 trial.

10 36. The actions described above constitutes the tort of Negligence under the laws of
11 Nevada. Further, under the FTCA, Defendant United States of America is liable for these actions.

12 37. As a result of the Defendant's actions, it has been necessary for Plaintiff to retain
13 the services of CALLISTER LAW GROUP, duly licensed and practicing attorneys in the State of
14 Nevada, to file this action; as such, Defendant should be required to pay reasonable attorney's
15 fees.

16 **COUNT II**
17 **FTCA / Negligent Infliction of Emotional Distress**

18 38. Plaintiff realleges and incorporates herein by reference each and every allegation
19 contained in the above paragraphs as if fully set forth herein.

20 39. Defendant and its employees engaged in extreme and outrageous conduct when
21 they detained Plaintiff in solitary confinement for 355 days without ever taking him to court or
22 giving him access to counsel.

23 40. Defendant's and its employees' negligent actions in failing to prosecute and
24 detaining and keeping custody of Plaintiff in solitary confinement for 355 days without Plaintiff
25 ever having access to counsel or being arraigned in front of a magistrate judge in the District of
26 Nevada resulted in significant physical and emotional harm to Plaintiff.

27 41. Defendant owed Plaintiff a general duty of care not to subject him to harm and
28 emotional distress as a result of the conduct alleged above.

43. As a result of Defendant's conduct, Plaintiff has experienced extreme agitation and has suffered severe anxiety for which he was required to seek medical treatment.

44. As a direct, proximate, and foreseeable result of the actions and omissions of Defendant and its employees, Plaintiff was incarcerated for 355 days and suffered harm, extreme and severe fright, shock, fear, horror, and emotional distress, the exact amount to be proven at trial.

45. The actions described above constitutes the tort of Negligent Infliction of Emotional Distress under the laws of Nevada. Further, under the FTCA, Defendant United States of America is liable for these actions.

46. As a result of the Defendant's actions, it has been necessary for Plaintiff to retain the services of CALLISTER LAW GROUP, duly licensed and practicing attorneys in the State of Nevada, to file this action; as such, Defendant should be required to pay reasonable attorney's fees.

47. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the above paragraphs as if fully set forth herein.

48. Defendant and its employees engaged in extreme and outrageous conduct when they detained Plaintiff in solitary confinement for 355 days without ever taking him to court or giving him access to counsel.

49. Defendant's and its employees' actions in failing to prosecute and detaining and keeping custody of Plaintiff in solitary confinement for 355 days without Plaintiff ever having access to counsel or being arraigned in front of a magistrate judge in the District of Nevada resulted in significant physical and emotional harm to Plaintiff.

50. Defendant's and its employees' actions and inactions were taken with reckless disregard for whether they would cause Plaintiff to suffer severe emotional distress.

1 66. Defendant and its employees lacked probable cause to commence and/or continue
2 that proceeding.

3 67. As described above, Defendant and its employees acted with malice.

4 68. Ultimately, the criminal proceedings against Plaintiff were terminated in his favor
5 – the charges were dismissed *with prejudice*.

6 69. Plaintiff was owed a duty of care by Defendant and Defendant's employees to
7 ensure the charges against him were timely prosecuted. Defendant and its employees also owed
8 Plaintiff a general duty of care while they held Plaintiff in their custody.

9 70. Defendant and its employees breached these duties when, among other things, they
10 detained and kept custody of Plaintiff for 355 days without Plaintiff ever having access to counsel
11 or being arraigned in front of a magistrate judge in the District of Nevada.

12 71. As a direct, proximate, and foreseeable result of the actions and omissions of
13 Defendant and its employees, Plaintiff was incarcerated for 355 days and suffered harm, extreme
14 and severe fright, shock, fear, horror, and emotional distress, the exact amount to be proven at
15 trial.

16 72. The actions described above constitutes the tort of Malicious Prosecution under the
17 laws of Nevada. Further, under the FTCA, Defendant United States of America is liable for these
18 actions.

19 73. As a result of the Defendant's actions, it has been necessary for Plaintiff to retain
20 the services of CALLISTER LAW GROUP, duly licensed and practicing attorneys in the State of
21 Nevada, to file this action; as such, Defendant should be required to pay reasonable attorney's
22 fees.

23
24 /.../.../

25
26 /.../.../

27
28 /.../.../

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court grant judgment against the Defendant herein, as follows:

- (a) Compensatory damages in an amount to be determined at trial;
- (b) Reasonable attorney fees and costs of suit; and
- (c) Such other relief as the Court deems appropriate and just.

Dated this 20th day of February, 2019.

Respectfully submitted,

CALLISTER LAW GROUP

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